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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11 RUSSELL R. WILLS; MICHELE  
12 ERICKSON,

13                  Plaintiffs,

14                  v.

15                  CITY OF DUPONT POLICE  
16                  DEPARTMENT; CITY OF DUPONT,

17                  Defendants.

18                  CASE NO. 19-cv-5795-RJB

19                  ORDER GRANTING LEAVE TO  
20                  AMEND COMPLAINT

21                  THIS MATTER comes before the Court on the remand Order from the United States  
22 Court of Appeals for the Ninth Circuit (Case No. 19-35983). The Court is familiar with the  
23 remand Order, the complaint, and the remainder of the record herein. For the reasons set forth  
24 below and in the remand Order, Plaintiffs should be granted leave to amend the complaint.

25                  **Review of the Complaint.** The Court has carefully reviewed the complaint in this matter.

26                  The complaint's claim and statement of the case, provided on a form, is that

27                  Defendant is indebted to plaintiff in the sum of \$ To Be  
28                  Determined. The basis for the debt is Procedural misconduct at a

1 routine traffic stop, August 21, 2016, Pain and suffering, punitive  
 2 damages[.]  
 3 Wherefore, Plaintiff prays for judgment against defendant in the  
 sum of \$ To Be Determined plus interest and plaintiff's costs and  
 disbursements.

4 Dkt. 1-1, at 2.

5 Because plaintiffs filed the complaint *pro se*, the court has construed the pleadings  
 6 liberally and has afforded plaintiffs the benefit of any doubt. *See Karim-Panahi v. Los Angeles*  
*7 Police Dep't*, 839 F.2d 621, 623 (9th Cir.1988). Even so, the complaint is inadequate and is not  
 8 "a short and plain statement of the claim showing that the pleader is entitled to relief," as is  
 9 required by Fed. R. Civ. P. 8 (a)(2). Pursuant to Fed. R. Civ. P. 8 (a):

10 **Claim for Relief.** A pleading that states a claim for relief must contain:

- 11 (1) a short and plain statement of the grounds for the court's jurisdiction, unless  
 the court already has jurisdiction and the claim needs no new jurisdictional  
 support;
- 12 (2) a short and plain statement of the claim showing that the pleader is entitled to  
 relief; and
- 13 (3) a demand for the relief sought, which may include relief in the alternative or  
 different types of relief.

14 While the pleading standard under Rule 8 "does not require 'detailed factual allegations,'"  
 15 it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft*  
*v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Although pleadings drafted by a party proceeding *pro se*  
 16 must be read more liberally than pleadings drafted by counsel, a *pro se* litigant is not excused  
 17 from knowing the most basic pleading requirements. *See American Ass'n of Naturopathic*  
*18 Physicians v. Hayhurst*, 227 F.3d 1104, 1107–08 (9th Cir. 2000).

19 **Sua Sponte Dismissal.** A federal court may dismiss a case *sua sponte* pursuant to Fed. R.  
 20 Civ. P. 12 (b)(6) when it is clear that the plaintiff has not stated a claim upon which relief may be  
 21 granted. *See Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir.1987) ("A trial court may  
 22 dismiss a claim *sua sponte* under Fed. R. Civ. P. 12 (b)(6). Such a dismissal may be made  
 23

1 without notice where the claimant cannot possibly win relief."). *See also Mallard v. United*  
 2 *States Dist. Court*, 490 U.S. 296, 307-08 (1989) (there is little doubt a federal court would have  
 3 the power to dismiss frivolous complaint *sua sponte*, even in absence of an express statutory  
 4 provision). A complaint is frivolous when it has no arguable basis in law or fact. *Franklin v.*  
 5 *Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984). Unless it is absolutely clear that no amendment  
 6 can cure the defect, a *pro se* litigant is entitled to notice of the complaint's deficiencies and an  
 7 opportunity to amend prior to dismissal of the action. *See Lucas v. Dep't of Corr.*, 66 F.3d 245,  
 8 248 (9th Cir. 1995).

9           **Claim for Violation of Constitutional Rights.** Although unclear from the vague  
 10 complaint, it appears that Plaintiffs are attempting to make a claim alleging violation of  
 11 constitutional rights. In order to state a claim for violation of a federal constitutional right under  
 12 42 U.S.C. § 1983, a complaint must allege that (1) the conduct complained of was committed by  
 13 a person acting under color of state law, and (2) the conduct deprived a person of a right,  
 14 privilege, or immunity secured by the Constitution or laws of the United States. *Parratt v.*  
 15 *Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds*, *Daniels v. Williams*, 474 U.S.  
 16 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of  
 17 these elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985), *cert.*  
 18 *denied*, 478 U.S. 1020 (1986). To state a civil rights claim, a plaintiff must set forth the specific  
 19 factual bases upon which he or she claims that each defendant is liable. *Aldabe v. Aldabe*, 616  
 20 F.2d 1089, 1092 (9th Cir. 1980).

21           Plaintiff's proposed complaint, which only references "[p]rocedural misconduct at a  
 22 routine traffic stop," does not allege any factual support to find that any of the defendants acted  
 23 under color of state law or that defendants' conduct deprived Plaintiffs of a right, privilege, or  
 24

immunity secured by the Constitution or laws of the United States. *See* Dkt. 1-1. Plaintiffs have failed to state a claim for which relief can be granted under § 1983 for a violation of Plaintiffs' constitutional rights.

**Leave to Amend.** Plaintiffs are **GRANTED LEAVE** to file a proposed amended complaint to attempt to state a claim upon which relief can be granted, due no later than **May 29, 2020**. Plaintiffs must comply with Fed. R. Civ. P. 8(a) in any proposed amended complaint. Failure to file a proposed amended complaint may result in dismissal of the case.

## **IT IS SO ORDERED.**

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 28<sup>th</sup> day of April, 2020.

Robert F. Bryan

ROBERT J. BRYAN  
United States District Judge